IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9768 of 1999

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MODASA TALUKA SAHAKARI KHARID VECHAN SANGH LTD

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR KL PANDYA, AGP, for Respondent No. 1-2

RULE SERVED for Respondent No. 3-5

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 31/03/2004

ORAL JUDGEMENT

1. The petitioner is a cooperative society, registered under the provisions of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as the Act). In this petition the petitioner Society has challenged the order of the respondent authority

appointing respondent nos.3 to 5 as Government Nominees on the Board of Directors of the petitioenr Society under section 80(1) of the said Act, by order dated 13th July 1998.

2. The District Registrar, respondent no.2 herein, by his letter dated 29th November 1998 called upon the petitioner Society to implement the Government decision dated 13th July 1998 appointing Government Nominees on the Board of Directors of the Society, failing which the District Registrar shall take appropriate action against the petitioner Society. Therefore the petitioner has approached this Court on 9th December 1999 wherein this Court has restrained the respondents from taking any action in pursuance of the letter dated 29th November 1999, Annexure-G to the petition. While admitting the petition on 4th October 2000, this Court has confirmed the ad interim relief granted earlier and the respondents were directed to file their reply on or before 13th November 2000 specifically mentioning as to whether the letter dated 26.12.1998 produced at Anenxure-E was replied to, and if yes, when and in what terms. In spite of the specific direction contained in the order dated 4th October 2000, no reply is filed by the respondent.

3. Heard the learned counsel for the respective parties. Learned counsel for the petitioner submitted that the petitioner Society has returned the share contribution of Rs.1,29,997/- to the State Government on 27.8.1998 and therefore the Government was not entitled to appoint Government Nominees on the Board of the petitioner society under section 80(1) of the said Act.

4. It is true that the Government has appointed three Government Nominees on 13th July 1998, vide Annexure-A to the petition. However, subsequently i.e. the payment was made to the State Treasury viz. State Bank of India and the Respondent no.2 District Registrar has accepted the challan of Rs.9994/- (Annexure-B collectively). Accordingly the State Government was informed by letter dated 17th October 1998 about the said payment. Again on 26th December 1998 the Secretary was also informed about the same. On 23rd March 1999 the respondent no.2 District Registrar has directed the petitioner Society to allow the Government Nominees to represent the State Government on the Board of the petitioner Society. Thereafter the notice dated 29th November 1999 was issued.

5. On perusal of section 80(1) of the Act it is clear that if the State Government has subscribed to the

share capital of a society, directly or through another society, or has guaranteed the repayment of the principal of and payment of interest on debentures issued or loans raised by a society, the State Government shall, notwithstanding anything contained in the bye-laws of such society, have the right to nominate three representatives on the Committee of such Society. However, in the instant case, since there is no investment on the share capital of the petitioner society, under section 80(1) of the Act the State Government is not entitled to nominate three government nominees on the Board of the petitioner Society. Under the circumstances the order dated 13.7.1998, Annexure-A and the order dated 29th November 1999 at Annexure-G to the petition are bad and null and void.

6. In view of the above facts and circumstances, the present petition succeeds. The impugned order dated 13.7.1998 at Annexure-A and the impugned order dated 29.11.1999 at Annexure-G are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]
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